

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

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**DANIEL HENDERSON,**

Plaintiff,

**v.**

**Case No. 23-CV-269**

**OFFICER JACKELS,**

Defendant.

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**ORDER**

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Plaintiff Daniel Henderson, who is incarcerated at Kettle Moraine Correctional Institution, is representing himself in this 42 U.S.C. § 1983 action. On March 17, 2023, the court screened his complaint and allowed him to proceed on a deliberate indifference claim against Defendant Officer Jackels. (ECF No. 4.) The court dismissed the remaining defendants, against whom Henderson sought, in part, to state a conditions of confinement claim, noting that Henderson did not allege that the defendants knew about the allegedly filthy cell conditions. On April 17, 2023, Henderson filed a motion to amend the complaint along with a proposed amended complaint. (ECF No. 8.) On April 26, 2023, this action was reassigned to this court because the parties consented to magistrate judge jurisdiction. ECF No. 11.

Henderson was allowed to proceed on an Eighth Amendment claim against Jackels based on allegations that Jackels ignored Henderson's requests for medical attention for his chest pains. Henderson's proposed amended complaint does not

include any allegations against Jackels. Instead, the amended complaint focuses on the conditions of the cell in which he was placed after he returned from the hospital. It appears from Henderson's motion that he is attempting to cure the deficiencies identified in the screening order by supplementing his original complaint with the allegations in his proposed amended complaint. But an amended complaint takes the place of a prior complaint—it is as though the prior complaint was never filed. *See Duda v. Bd. of Educ. of Franklin Park Pub. Sch. Dist. No. 84*, 133 F.3d 1054, 1056–57 (7th Cir. 1998). Accordingly, if the court were to allow Henderson to amend his complaint in the way he proposes, he would no longer state a claim against Jackels because Jackels is not mentioned in the proposed amended complaint.

Because the court does not believe Henderson intends to abandon his claim against Jackels, it will deny his motion to amend the complaint. The court will allow Henderson to file an amended complaint that contains all of his allegations against all the defendants he wants to sue. To repeat, the amended complaint will take the place of the original complaint so it must be complete in and of itself without reference to the original complaint.

**IT IS THEREFORE ORDERED** that Henderson's motion to file an amended complaint (ECF No. 8) is **DENIED**.

**IT IS FURTHER ORDERED** that Henderson may file an amended complaint by **May 30, 2023**. If he chooses not to file an amended complaint, the original complaint will remain the operative complaint. The clerk's office will include a blank amended complaint form along with this order.

Dated at Milwaukee, Wisconsin this 1st day of May, 2023.

BY THE COURT

A handwritten signature in black ink, reading "William E. Duffin", written over a horizontal line.

WILLIAM E. DUFFIN  
United States Magistrate Judge